

**Jason Hassay**

**From:** Harold Cook <hc@haroldcook.com>  
**Sent:** Tuesday, January 25, 2011 2:32 PM  
**To:** Amber Hausenfluck; Steve Scheibal; Ray Martinez; Debra Gonzales; David Edmonson; Will Krueger; Jason Hassay; Dan Buda; Graham Keever; Micah Rodriguez; Graham Keever\_SC; Sara Gonzalez; Lara Wendler; Gonzalo Serrano; Oscar Garza; Sushma Smith  
**Subject:** follow-up on Zaffirini's identity issue

Senator Zaffirini did an excellent job pointing out how people's drivers license photo often does not resemble the actual people. Here's related documentation.

Begin forwarded message:

**From:** Yannis Banks <yannis\_banks@yahoo.com>  
**Date:** January 25, 2011 2:27:02 PM CST  
**To:** hc@haroldcook.com  
**Subject:** Fw: Blank 33

----- Forwarded Message -----

**From:** Gary Bledsoe <garybledsoe@sbcglobal.net>  
**To:** "Asaka, Anson" <aasaka@naacpnet.org>  
**Cc:** Robert S. Notzon <robert@notzonlaw.com>; Yannis Banks <yannis\_banks@yahoo.com>; Harold Howell <harold17@swbell.net>; "hjefferson@protectorsinsurance.com" <hjefferson@protectorsinsurance.com>; brian rowland <browland3@hotmail.com>; "Goode, Victor" <vgood@naacpnet.org>; victor goode <vlq0208@aol.com>; Mrs. Linda Lydia <llydia@sbcglobal.net>; Phyllis L. Jones <twinch@embarqmail.com>; "Watkins, Carmen" <cwatkins@naacpnet.org>; Carolyn Scantlebury <cscantle01katrina@yahoo.com>; John Tanner <john.k.tanner@gmail.com>  
**Sent:** Tue, January 25, 2011 2:23:47 PM  
**Subject:** Re: Blank 33

**Race, Racism and the Law**  
**Speaking Truth to Power!!**

## Why are Cross-Racial Eyewitness IDs Especially Unreliable?

Checkout: [Reclamationgallery.com](http://Reclamationgallery.com)

Complete Survey: [Race Relations 2011](http://Race Relations 2011)

UNITS

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Institutional Racism

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01 Race

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02 Citizenship Rights

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03 Justice

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John P.  
 Rutledge

excerpted from: John

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CHAPTERS

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Justice and Racism

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2:13-cv-193  
 09/02/2014

DEF2699

exhibitsicker.com

<a href="#">04 Basic Needs</a>	<a href="#">P. Rutledge, They All</a>	<a href="#">Presidential Power</a>
<a href="#">05 Intersectionality</a>	<a href="#">Look Alike: the</a>	<a href="#">Civil Justice</a>
<a href="#">06 Worldwide</a>	<a href="#">Inaccuracy of Cross-</a>	<a href="#">Criminal Justice</a>
	<a href="#">racial Identifications ,</a>	<a href="#">Laws and Policies</a>
	<a href="#">28 American Journal</a>	<a href="#">Minority Group Interests</a>
	<a href="#">of Criminal Law 207-</a>	<a href="#">Legal Education</a>
	<a href="#">228, 211-214 (Spring</a>	<a href="#">Practice of Law</a>
	<a href="#">2001)(173 Footnotes</a>	<a href="#">Alternative Dispute Resol</a>
	<a href="#">Omitted)</a>	
<a href="#">Web Editor</a>	<a href="#">In general, there is</a>	
<a href="#">Vernellia R.</a>	<a href="#">a much greater</a>	
<a href="#">Randall</a>	<a href="#">possibility of error</a>	
<a href="#">Professor of Law</a>	<a href="#">where the races</a>	
<a href="#">The University of</a>	<a href="#">are different than</a>	
<a href="#">Dayton</a>	<a href="#">where they are the</a>	
	<a href="#">same . . . .</a>	
<a href="#">OTHER WEBSITES</a>	<a href="#">A cross-racial ID</a>	<a href="#">OTHER PAGES</a>
<a href="#">Personal Website</a>	<a href="#">occurs when an</a>	<a href="#">What's New</a>
<a href="#">Race and Health Care</a>	<a href="#">eyewitness of one</a>	<a href="#">Obama's Administration</a>
<a href="#">Legal Education</a>	<a href="#">race is asked to</a>	<a href="#">Webinars</a>
<a href="#">The ID Project</a>	<a href="#">identify a</a>	<a href="#">Whitest Law Schools</a>
	<a href="#">particular</a>	<a href="#">Law Reviews</a>
	<a href="#">individual of</a>	<a href="#">Newsletter</a>
	<a href="#">another race. The</a>	<a href="#">Racial Surveys</a>
	<a href="#">last half-century's</a>	<a href="#">Awards</a>
	<a href="#">empirical study of</a>	<a href="#">Syllabus</a>
	<a href="#">cross-racial IDs</a>	<a href="#">Comments</a>
	<a href="#">has shown that</a>	<a href="#">Search this Site</a>
	<a href="#">eyewitnesses have</a>	<a href="#">Contact</a>
	<a href="#">difficulty</a>	
	<a href="#">identifying</a>	
	<a href="#">members of</a>	
	<a href="#">another race,</a>	
	<a href="#">though the degree</a>	
	<a href="#">to which this</a>	
	<a href="#">difficulty affects</a>	
	<a href="#">the accuracy of an</a>	
	<a href="#">eyewitness ID is</a>	

not certain.  
Likewise, it is  
unclear whether  
all races are  
affected.

Known as the  
"own-race" effect  
or "own-race"  
bias, eyewitnesses  
experience the  
"cross-racial  
impairment" when  
attempting to  
identify  
individuals of  
another race. The  
"own-race effect"  
is "strongest when  
white witnesses  
attempt to  
recognize black  
subjects," and  
apparently less  
influential to black  
witnesses. In fact,  
four separate  
studies found that  
black  
eyewitnesses do  
not experience  
any cross-racial  
impairment. And  
another found  
that blacks make  
better witnesses in  
general. But five  
other studies

found that white  
eyewitnesses  
simply experience  
the impairment  
more often than  
blacks. Regardless  
of the degree to  
which each race  
suffers from the  
impairment, a  
leading scholar on  
the subject has  
concluded that "it  
has been observed  
so many times"  
that "it seems to  
be a fact."

Concern about the  
frequent  
inaccuracy of  
cross-racial IDs is  
extensively  
documented in  
case law and  
social science  
data. And some  
judges believe the  
cross-racial  
nature of an  
identification may  
affect accuracy in  
the same way as  
proximity to the  
perpetrator and  
poor lighting  
conditions. As one  
federal judge



expressed more  
than a decade  
ago:

We are painfully  
aware of  
miscarriages of  
justice caused by  
wrongful  
identification.  
Those  
experienced in  
criminal trial work  
or familiar with  
the administration  
of justice  
understand that  
one of the great  
problems of proof  
is posed by  
eyewitness  
identification,  
especially in  
cross-racial  
identification . . . .

Likewise, a  
prominent state  
supreme court  
judge discussed  
the complexity of  
the phenomena as  
follows:

[I]t is well  
documented that  
cross-racial  
identification is  
less reliable than

identification of  
one person by  
another of the  
same race.

Considerable  
evidence indicates  
that people are  
poorer at  
identifying  
members of  
another race than  
of their own.

Adding the  
commonly held  
belief that blacks  
are treated  
disparately in the  
criminal justice  
system, it is easy  
to see that the  
problem is  
complex and not  
easily allocated for  
or rectified.

And yet, this  
wealth of social  
science data and  
abundance of case  
law has yet to  
inspire legal  
scholars to  
address the issue  
directly. In fact, I  
was unable to  
locate a single law  
review article that

deals exclusively  
with the topic of  
cross-racial IDs.  
Hence, this article:  
my contribution to  
the dialogue. It  
should be noted  
that the article is  
not meant to be  
exhaustive.  
Rather, it is  
written as an  
overview written  
with the express  
intent to inspire  
contributions from  
the scholastic  
legal community.  
The problem is  
not going to  
disappear. It must  
be dealt with, as  
the very integrity  
of our criminal  
justice system  
depends upon its  
resolution.

I first became  
interested in the  
subject matter  
while working as a  
student clinician  
in law school. The  
issue seemed to  
arise in many of  
the clinic's cases.  
Granted, my

universe of  
experience was a  
bit atypical. I was  
one of a handful  
of white students  
in my entering  
class at Howard  
University School  
of Law. And most  
of our clinic's  
clients were black.  
The high  
concentration of  
white victim/black  
perpetrator cases  
caused me to  
consider many  
issues, some  
societal and some  
interpersonal. One  
of these issues  
was the apparent  
inaccurate  
identification of  
several of our  
clients.

As a white  
graduate of a  
historically black  
law school, I bring  
a unique  
perspective to the  
discussion of  
cross-racial IDs. I  
believe my  
experiences add a  
valuable insight to

the central  
question at hand:  
Why do white  
people have so  
much trouble  
correctly  
identifying a black  
person?

Several months of  
research and  
reflection on little  
else but this topic  
has led me to a  
few conclusions.  
These conclusions  
are my own and  
are not based  
upon, or  
necessarily  
supported by,  
empirical data.

By nature, people  
are generally  
homogenous. We  
tend to prefer  
those we are  
familiar with,  
those with whom  
we identify. White  
people tend to  
prefer other  
whites, as rich  
people tend to  
prefer the  
company of others  
with money. These



groups are not alone in that respect: black people generally feel most comfortable around other blacks and poor people around other poor people. There's a pre-established comfort level--a set of customs and mores already in place. The comfort level allows one to relax and live less deliberately.

Those of different races may have different customs and mores, different ideas of permissible speech, behavior, diet, and dress. The hair texture and styles of the various races is often different, as is facial and body structure. In light of these considerations, I believe the major

cause of the cross-racial impairment is the lack of familiarity with those of other races. We often work together, and at times eat together, but seldom do we live in the same neighborhoods or attend the same churches. These latter activities reflect, in my mind, our lack of comfort among those of other races. Sadly, it is a self-fulfilling cycle: comfort keeps us apart, and yet, living amongst each other would establish a comfort level. With this paradox as our communal mindset, familiarity is a difficult thing to achieve. How can one be expected to accurately identify a member

of a group with whom they are so utterly unfamiliar?

One of my colleagues has attacked my viewpoint as simplistic. He refuses to believe that familiarity with those of other races might alleviate the inaccuracy of cross-racial IDs.

As support for his contention, he cites various authorities that conclude, "counterintuitively, the ability to perceive the physical characteristics of a person from another racial group apparently does not improve significantly upon increased contact with other members of that race . . . ."

Ironically, I believe these findings

strengthen my  
rationale as  
expressed in the  
analysis above.  
Time spent in the  
same general  
location is not the  
same as time  
spent together.  
Just as talking to  
someone is not  
necessarily  
communicating  
with that person. I  
believe the entire  
basis of these  
findings is flawed.  
Those  
orchestrating the  
studies confuse  
commonality with  
comfort. Like two  
New Yorkers  
passing on the  
street, many of us  
have never been  
intimate with  
someone of  
another race. And  
without intimacy,  
we have no reason  
to feel  
comfortable. Nor  
do we have the  
right to expect an  
accurate  
eyewitness ID.

In my three years  
at Howard, I  
learned so many  
things that I didn't  
know I didn't  
know. I learned  
about locks and  
cornrows, braids  
and fades. I  
learned the  
difference  
between high yella  
and red-boned  
and brown-  
skinned and dark-  
skinned. My life  
experience does  
not allow me to  
accept the finding  
that these  
discoveries do not  
make me more  
likely to correctly  
identify a black  
assailant than a  
white person  
without a similar  
experience.

In that respect, I  
believe cross-  
racial IDs will  
become less of a  
problem as  
America matures  
and we get closer  
to Martin Luther  
King Jr.'s dream.



At this time,  
however, the  
unreliability of  
cross-racial IDs is  
particularly  
troublesome. One  
in three black  
males between the  
ages of twenty  
and twenty-nine is  
under judicial  
supervision in this  
country. And while  
only five percent  
of the U.S.  
population, black  
males make up  
more than half of  
America's  
prisoners. We  
must explore the  
various measures  
available to help  
ameliorate the  
harm caused by  
inaccurate cross-  
racial IDs.  
Innocent people  
have been, and  
continue to be,  
stripped of their  
liberty simply  
because "they all  
look alike."

. Associate,  
Donahue,  
Gallagher, Woods

& Wood, L.L.P.;  
L.L.M., Real  
Property  
Development,  
University of  
Miami School of  
Law; J.D., Howard  
University School  
of Law (cum  
laude); B.A.,  
Philosophy, Loyola  
Marymount  
University. This  
article is  
dedicated to all  
those falsely  
imprisoned due to  
an inaccurate  
eyewitness  
identification. Our  
collective soul is  
marred by your  
injustice. And no  
subsequent  
remedy can repay  
you for the pain  
you've suffered or  
the life you've  
lost. However, let  
us begin with an  
apology and an  
oath to never  
again permit such  
injustice.

Same [ [The Underlying Myths of Colorblindness Jurisprudence](#) ] [ [Presidential Power and Racial Justice](#) ]  
level: [ [The McKinney Affair: Rampaging Racism and a Cowardly Caucus](#) ]  
[ [Misusing MLK Legacy and the Colorblind Theory](#) ] [ ["Sounding Black": Court-](#)